

**Summary of the
OSCE Rule of Law Seminar
November 28–December 1, 1995**



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**A Report Prepared by the Staff of the
Commission on Security and Cooperation in Europe**

ABOUT THE ORGANIZATION (OSCE)

The Conference on Security and Cooperation in Europe, also known as the Helsinki process, traces its origin to the signing of the Helsinki Final Act in Finland on August 1, 1975, by the leaders of 33 European countries, the United States and Canada. Since then, its membership has expanded to 55, reflecting the breakup of the Soviet Union, Czechoslovakia, and Yugoslavia. (The Federal Republic of Yugoslavia, Serbia and Montenegro, has been suspended since 1992, leaving the number of countries fully participating at 54.) As of January 1, 1995, the formal name of the Helsinki process was changed to the Organization for Security and Cooperation in Europe (OSCE).

The OSCE is engaged in standard setting in fields including military security, economic and environmental cooperation, and human rights and humanitarian concerns. In addition, it undertakes a variety of preventive diplomacy initiatives designed to prevent, manage and resolve conflict within and among the participating States.

The OSCE has its main office in Vienna, Austria, where weekly meetings of permanent representatives are held. In addition, specialized seminars and meetings are convened in various locations and periodic consultations among Senior Officials, Ministers and Heads of State or Government are held.

ABOUT THE COMMISSION (CSCE)

The Commission on Security and Cooperation in Europe (CSCE), also known as the Helsinki Commission, is a U.S. Government agency created in 1976 to monitor and encourage compliance with the agreements of the OSCE.

The Commission consists of nine members from the U.S. House of Representatives, nine members from the U.S. Senate, and one member each from the Departments of State, Defense and Commerce. The positions of Chair and Co-Chair are shared by the House and Senate and rotate every two years, when a new Congress convenes. A professional staff assists the Commissioners in their work.

To fulfill its mandate, the Commission gathers and disseminates information on Helsinki-related topics both to the U.S. Congress and the public by convening hearings, issuing reports reflecting the views of the Commission and/or its staff, and providing information about the activities of the Helsinki process and events in OSCE participating States.

At the same time, the Commission contributes its views to the general formulation of U.S. policy on the OSCE and takes part in its execution, including through Member and staff participation on U.S. Delegations to OSCE meetings as well as on certain OSCE bodies. Members of the Commission have regular contact with parliamentarians, government officials, representatives of non-governmental organizations, and private individuals from OSCE participating States.

SUMMARY OF THE OSCE RULE OF LAW SEMINAR⁽¹⁾

This summary is part of a continuing series of reports prepared by Helsinki Commission staff on OSCE activities. For additional information on this or other aspects of the OSCE, please contact the Commission staff at (202) 225-1901.

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BACKGROUND

From November 28 to December 1, 1995, the participating States of the Organization for Security and Cooperation in Europe (OSCE)⁽²⁾ convened a seminar on the rule of law. The meeting was organized by the Warsaw-based OSCE Office for Democratic Institutions and Human Rights (ODIHR). Thirty-eight⁽³⁾ of the 53 fully participating States attended, along with representatives from two Non-Participating Mediterranean States,⁽⁴⁾ six international organizations, and 25 non-governmental organizations.

The U.S. Delegation was headed by former Congressman Don Edwards, whose previous public service included his appointment as Chairman of the Judiciary Committee of the House of Representatives. Ed Rekosh, a non-governmental specialist in the field of human rights, brought his considerable expertise to the delegation as a public member. Others on the U.S. Delegation came from the State Department's Bureau of Democracy, Human Rights and Labor; the permanent U.S. Delegation to the OSCE in Vienna; and the Washington-based Commission on Security and Cooperation in Europe.

The Rule of Law Seminar grew out of a Norwegian proposal made at the 1993 Human Dimension Implementation Review meeting. Norway had previously hosted a seminar of experts on democratic institutions in November 1991, reflecting that country's long-standing commitment to this area of the human dimension;⁽⁵⁾ its desire to convene another OSCE meeting on the rule of law was strongly supported by the United Kingdom.

Discussion Group 1 was devoted to consideration of the constitutional foundations of the rule of law, including the independence of the judiciary, the relationship between the judiciary and the legislature, and the competence of the courts to test the legality of decisions made by administrative authorities. The moderator was Per Tresselt, the Norwegian representative at the 1991 Oslo seminar and currently Norway's Ambassador to Russia. The rapporteur was Matthias Weckerling, Deputy Agent of the German Federal Government before the European Commission and the European Court of Human Rights.

Discussion Group 2 was devoted to consideration of the implementation of the rule of law, including conditions for an independent body of lawyers, free legal assistance, and the role of legal and judicial bodies in combating organized crime and corruption. The moderator was Jerry Prus-Butwilowicz, Senior Crown Prosecutor with the Fraud Division, Crown Prosecution Service of England and Wales. The rapporteur was Robert Allan McChesney, a Canadian public policy consultant. In each group, the participants used as a general guide for their discussion a "food for thought" paper prepared by the moderators in advance of the meeting.

Over the course of two days, a number of emerging democracies described the constitutions and other legislative provisions that had been adopted in their countries to provide for the rule of law, at least on paper. Western participants, for their part, generally spoke of the specific and concrete challenges faced in their countries in actually implementing safeguards for the rule of law. In general, the participation of East-Central European and former Soviet countries—most of which attended this meeting—was more active than at the 1991 Oslo meeting, and Western participants, for their part, avoided the West-West bickering that marred the earlier seminar. At the end of the meeting, the rapporteurs produced summaries of the discussions.

ASSESSMENT

A variety of criteria may be used to measure the success of meetings such as these: How valuable was the meeting to the non-governmental community? How many governments viewed the meeting as worth attending? Were any specific recommendations generated for concrete measures? Is the meeting likely to shape the actions taken by governments? By most standards, the Rule of Law Seminar failed to measure up.

Some difficulties faced by the participants in Warsaw stemmed from events beyond human control. A thick fog, for example, prevented the arrival of one of the keynote speakers as well as a number of delegates on the opening day. For the most part, however, other shortcomings were both predictable and avoidable. They included:

The agenda, drafted by permanent delegations to the OSCE in Vienna and adopted by the Committee of Senior Officials in Prague, failed to take into account other work done on this subject in the OSCE context: the 1991 Oslo meeting; the human dimension implementation review meetings (which includes, as an explicit agenda item, the rule of law); the on-going work of OSCE missions, some of which deal with rule of law issues; and the specific activities of the ODIHR's own rule of law programs. In fact, the specific recommendations regarding the rule of law made by participating States and non-governmental organizations during the OSCE implementation review meeting, held just a few weeks earlier in October 1995, were not discussed or reflected in any way during the meeting. While the decision to convene this meeting appeared to stem from a laudable and genuine interest in promoting the rule of law, the agenda did not seem sufficiently related to concrete problems. The agenda was overly broad and somewhat academic, meaning that only a superficial discussion on any given item could be held. Given the breadth of subjects included in the agenda and the fact that, inevitably, governments can only send a finite number of people to any given meeting, the participants had fairly disparate specializations. As a result, real dialogue on any discrete agenda item was possible only with a small percentage of participants actively engaged.

With such limited interaction, it was not really possible to craft suggestions for concrete action or follow-up activities within the OSCE context. Finally, the meeting was scheduled at a time that made it virtually impossible for governments to devote adequate attention to preparation for and participation in this seminar. The participating States had committed themselves to undertake, within the space of a little more than two months, a major, full-scale review of the implementation of all human dimension commitments (October); a meeting of the Council of Senior Officials (October); two economic seminars, one in Bucharest and one in Sofia (November); and an annual ministerial meeting (early December). In addition, the same government offices responsible for these activities also had to oversee the usual on-going OSCE activities, such as staffing and supporting missions, as well as the unanticipated challenges for the OSCE stemming from the conclusion of the Dayton Agreement. The Rule of Law Seminar was wedged in the middle of all this, and thus competed with these other activities for the limited time and attention of OSCE officials in Vienna and in various capitals.

There are, perhaps, a few saving graces that should also be noted. First, the ODIHR took the initiative to use the context of the meeting for related rule of law discussions. For example, the three Bosnian Federation Ombudspersons (appointed under the auspices of the OSCE), as well as the Deputy Head of the OSCE Mission to Sarajevo, attended an ODIHR rule of law training program held on the margins of the seminar. Their presence made it possible to have consultations with government representatives, particularly regarding the implementation of the Dayton Agreement. In addition, the Deputy Chief Prosecutor of the International Criminal Tribunal for the Former Yugoslavia arrived in Warsaw for the last day of the seminar as part of the training program for the Bosnian Ombudspersons.

Finally, the fact that this meeting was held at all signaled the continued interest on the part of most participating States in this subject. The Norwegians and the British, in particular, are to be commended for their support of the human dimension and their active efforts to address complex and compelling challenges that all countries face in their struggle to translate rule-of-law commitments into practice. This meeting can rightly be placed in the context of the on-going learning curve of the OSCE as it seeks to "operationalize" its approach to human rights and humanitarian concerns. The problems outlined above are unfortunate, but they are capable of redress if governments are sufficiently attentive to them.

All in all, however, the negatives of this meeting outweighed the benefits. Unless the kinds of shortcomings outlined here can be addressed and resolved, another rule of law seminar of this kind should not be held, leaving the ODIHR and the participating States free to concentrate their limited resources on other, more productive areas, such as the on-going work of the OSCE missions, regional seminars, and more focused cooperative endeavors of the ODIHR.

1. Prepared by the staff of the Commission on Security and Cooperation in Europe, January 1996.
2. Known, until January 1, 1995, as the Conference on Security and Cooperation in Europe.
3. The 14 countries which did *not* attend were: Belgium, Bosnia-Herzegovina, Cyprus, Estonia, France, Hungary, Iceland, Ireland, Latvia, Liechtenstein, Luxembourg, Malta, Monaco, and Slovenia.
4. Egypt and Tunisia sent representatives from their bilateral missions in Warsaw.
5. For a description of the Oslo meeting, *see* From Vienna to Helsinki: reports on the Inter-Sessional Meetings of the CSCE Process, reports prepared by the Staff of the Commission on Security and Cooperation in Europe (1992), pp. 177-187.